

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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5 SECURITIES INVESTOR
6 PROTECTION CORPORATION,

7 Case No. 08-01789(SMB)

8 Debtor.

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10 IRVING H. PICARD, TRUSTEE
11 FOR THE LIQUIDATION OF
12 BERNARD L. MADOFF
13 INVESTMENT SECURITIES
14 LLC, AND BERNARD L.
15 MADOFF,

16 Plaintiffs,

17 v. Adv. Case No. 10-04311(SMB)

18 ANDREW H. COHEN,
19 Defendant.

20 - - - - - x

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22 U.S. Bankruptcy Court
23 One Bowling Green
24 New York, New York
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October 14, 2015

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B E F O R E :

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HON STUART M. BERNSTEIN

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U.S. BANKRUPTCY JUDGE

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Hearing re: TRIAL

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Transcribed by: Dawn South

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P R O C E E D I N G S

THE COURT: Madoff?

(Pause)

THE COURT: Is the plaintiff ready?

MR. CREMONA: We are, Your Honor.

MR. ROLLINSON: Yes, Your Honor.

THE COURT: Is the defendant ready?

MR. GOETT: Yes, Your Honor.

THE COURT: Does the plaintiff wish to make an
opening statement?

MR. ROLLINSON: Yes, Your Honor.

THE COURT: Go ahead.

MR. ROLLINSON: Good morning, Your Honor, James
Rollinson, here on behalf of Baker Hostetler and the Irving
H. Picard Trustee of the consolidated estate BLMIS and
Bernard L. Madoff. With me here today, Your Honor, are my
partners, Nick Cremona, Mr. Murphy, and Ms. Ona Wang.

Your Honor, we're here today for the trial of the
adversary proceeding that the trustee has brought against
Andrew H. Cohen, a former trader at BLMIS.

In this case the trustee specifically seeks to
avoid pursuant to Section 548(a)(1)(a) of the Bankruptcy
Code and to recover pursuant to 558(a) of the Code certain
fraudulent transfers received by Mr. Cohen totaling
\$1,143,461 that were received by Mr. Cohen in the two-year

1 period prior to the collapse of BLMIS.

2 Your Honor, when the parties were actually
3 initially before Your Honor on June 2nd of 2015, Mr. Lewis
4 advised the Court at that time that the sole remaining issue
5 before Your Honor was the issue of antecedent debt, which
6 prompted Your Honor to respond, and I'll quote, "Well why
7 don't you just enter into a stipulation of facts and try the
8 case on stipulated facts?" Unfortunately at that time back
9 in June, Your Honor, there were a number of open factual
10 issues between the parties. Now there are none, Your Honor.

11 Last week on Thursday the parties submitted to
12 Your Honor a proposed second revised joint pretrial order,
13 and in that particular order they stipulated to all facts
14 that the trustee's required to establish under 548(a)(1)(a)
15 to satisfy his avoidance claim under that particular
16 statute.

17 Specifically the parties have stipulated to
18 Mr. Cohen's receipt of 1,143,461 in transfers in excess of
19 the principal that he invested with BLMIS.

20 The parties specifically stipulated in that order
21 that each of the transfers constitute in the interest of
22 BLMIS and property within both the meaning of 101 -- Section
23 10154 of the Bankruptcy Code as well as 78fff(2)(c)(3) of
24 SIPA.

25 Additionally, Your Honor, in those stipulations is

1 Section 3 of the order, Your Honor, the parties stipulated
2 that each of those transfers was made by BLMIS with the
3 actual intent to hinder, delay, and defraud that existing
4 customers or future customers -- excuse me -- creditors.

5 And finally, Your Honor, for purposes of today's
6 proceedings, the parties further stipulated that during all
7 relevant periods relevant in this case that BLMIS was
8 operating a Ponzi scheme through its IA business.

9 And, Your Honor, so we're here before you on a
10 stipulated record of facts -- stipulated facts. We reached
11 these particular stipulations based on the strength frankly
12 of the trustee's three expert witnesses. Their analysis
13 that they conducted, their conclusions, their findings, and
14 opinions. And those three experts are Mr. Greenblatt --
15 Matt Greenblatt of FTI, Lisa Kluer (ph) of FTI, and then
16 Bruce Debinsky (ph).

17 And I need not go into the details of each of
18 their opinion, but it was on the strength of those opinions
19 offered and conclusions reached by those experts that the
20 parties entered into the stipulations. And again, there's
21 nothing left in terms of a factual dispute to make up the
22 both trustee's claim under 548(a)(1)(a) and also to recover
23 those transfers for value thereof pursuant to Section
24 558(a).

25 With that as for purposes of an opening statement

1 I'll leave it at that and I'll give the floor to Mr. Goett
2 to proceed with introduction of both the stipulations as
3 well as the stipulated exhibits.

4 THE COURT: Okay. Go ahead.

5 MR. GOETT: Good morning, Your Honor, Gregory
6 Goett, Lewis & McKenna for defendant, Andrew H. Cohen.

7 Your Honor, Mr. Cohen is an innocent investor who
8 has been invested with Madoff since 1996. He did so as an
9 employee who believed that his contributions to the Madoff
10 fund would provide him with a retirement account. And in
11 furtherance of that he continually made investments from
12 1996 until 2000 making only one withdrawal during that time
13 period.

14 In 2001 based on the belief that he had over
15 \$2 million in that account Mr. Cohen resigned from BLMIS,
16 moved down to Virginia Beach, and began what he thought was
17 a new life away from the securities industry.

18 And at that point, as the stipulated facts and
19 documents will show, began to withdraw from his account in
20 reliance on those statements that he was receiving from
21 BLMIS and began to treat it as a primary, if not co-primary
22 source of income for himself.

23 He did so because he had signed an agreement with
24 BLMIS, which again are stipulated in the evidence and facts,
25 Your Honor, that they would be investing these fund for him

1 and provided him monthly statements showing that balance.

2 It was not until 2008 that he learned that there
3 was this Madoff Ponzi scheme, but at the time when these
4 withdrawals were made he had no knowledge and was looking at
5 account statements showing him two million plus dollars of
6 funds. That has legal consequences and significance, Your
7 Honor.

8 Therefore in 2008 he learned not only did he not
9 have \$2 million, he also was being asked to return over a
10 million dollars of the money that he again had no knowledge,
11 no -- it's actually stipulated to the fact that Mr. Cohen
12 had no knowledge, it's not in his complaint.

13 We don't dispute that the transfers took place,
14 Your Honor, and we do not dispute that there was a Ponzi
15 scheme being -- as set forth in the expert testimony. What
16 we dispute is the legal treatment of those transfers, and --

17 THE COURT: Well those are legal arguments, right?
18 And I understand that. What I'm interesting in is whether
19 or not there are any factual disputes to be tried.

20 MR. GOETT: Yes, Your Honor, we intend to submit
21 as proof of factual the damages incurred by Mr. Cohen as a
22 result of those -- of that fraud.

23 THE COURT: Aside from the taxes?

24 MR. GOETT: The taxes and legal fees, Your Honor.

25 We also intend to submit documents showing --

1 THE COURT: Legal fees for what?

2 MR. GOETT: This trial, Your Honor. Mr. Cohen has
3 been forced to defend these claims by the trustee as a
4 result of Mr. --

5 THE COURT: What's the legal basis for those legal
6 fees -- for recovering those legal fees?

7 MR. GOETT: It's a consequential damage of the
8 fraud perpetrated out-of-pocket loss incurred by Mr. Cohen
9 at this time.

10 THE COURT: Okay.

11 MR. GOETT: And, Your Honor, finally we would also
12 submit -- well the trustee has all right, you know, put them
13 into his exhibits at this time, Your Honor, that the account
14 statements, the account agreements will also support
15 Mr. Cohen's claims for his antecedent 548(c) setoffs at this
16 time.

17 THE COURT: The trustee has conceded what?

18 MR. GOETT: No, Your Honor, the trustee's exhibits
19 include both the account statements as well as the
20 securities contracts entered into between Mr. Cohen and
21 Mr. Madoff -- or Madoff, sorry, and we believe those will
22 also be factual support for our claims for 548(c) defenses
23 for Mr. Cohen at the time.

24 THE COURT: Let me turn to the trustee's prima
25 facie case. Are there any factual disputes relating to the

1 trustee's prima facie case or is this a case about defenses
2 at this point?

3 MR. GOETT: At this time, Your Honor, it's a case
4 about defenses.

5 THE COURT: All right. So you don't dispute that
6 the trustee has established through the evidence his prima
7 facie case to recover what he --

8 MR. GOETT: We stipulate to the facts, Your Honor,
9 in the expert reports, and that's set forth in those expert
10 reports to the extent they support his prima facie case. We
11 have stipulated to his expert reports and we have stipulated
12 to the fact that the transfers that Mr. Cohen has been
13 alleged to have received and may -- took place as set forth
14 by the trustee, to the extent those reports support his
15 prima facie case, Your Honor.

16 THE COURT: But didn't you stipulate that the
17 transfers were made in connection with a Ponzi scheme?

18 MR. GOETT: Yes, we do believe --

19 THE COURT: Didn't you stipulate that he withdrew
20 about \$1.1 million --

21 MR. GOETT: Yes, we'd stipulate -- we withdrew --
22 he withdrew that money, Your Honor.

23 THE COURT: So what else is there left to the
24 trustee's case?

25 MR. GOETT: Your Honor, that's for the trustee.

1 From where I sit (indiscernible) we think it's a question
2 about -- specifically about the legal effect of those
3 transfers.

4 THE COURT: I understand that, but --

5 MR. GOETT: And the obligations that were owed by
6 Madoff to Mr. Cohen.

7 THE COURT: I'm not sure that the trustee would
8 have a burden of showing that there were no obligations.

9 MR. GOETT: Your Honor --

10 THE COURT: As part of his prima facie case.

11 MR. GOETT: No, Your Honor, we would plead that
12 the obligations provided a defense under 548(c).

13 THE COURT: But that's a defense, that's not --

14 MR. GOETT: I mean, Your Honor --

15 THE COURT: I'm just trying to find out if the
16 trustee can sit down and you can stand up.

17 MR. GOETT: Yes, Your Honor, I believe at this
18 point in time we believe that would be part of the --

19 THE COURT: All right. And the factual issues
20 relating to the defenses besides the legal fees and the
21 additional taxes, are there any other factual issues?

22 MR. GOETT: Your Honor, we're also taking (sic)
23 the Court to take judicial notice of the CPI index, as
24 adjustments for time value for Mr. Cohen's withdrawals -- I
25 mean sorry -- deposits and withdrawals to account for the

1 time value of the money.

2 We're also submitted the -- ask that the Court
3 take judicial notice of the risk-free tea bill rate on
4 treasury bonds on a three-month basis, again, as another
5 adjustment due to lost opportunity cost for investment.

6 THE COURT: All right.

7 MR. GOETT: And also finally, Your Honor, whether
8 or not the Court needs to take judicial notice of CPLR 5001
9 (indiscernible) interest.

10 THE COURT: But you have to recover judgment for
11 that.

12 MR. GOETT: Your Honor, I understand.

13 THE COURT: First of all I can't enter a judgment,
14 but putting that to its side --

15 MR. GOETT: We'd argue it's relevant.

16 THE COURT: -- you're not seeking a judgment.

17 MR. GOETT: I'm sorry, Your Honor?

18 The COURT: You're not seeking a judgment, you
19 withdrew your counterclaim.

20 MR. GOETT: No, Your Honor, we are seeking to
21 establish it is -- it will act as an offset or as a --
22 sorry, Your Honor -- as for value to adjust the value of his
23 claims.

24 THE COURT: I think the issue though is whether
25 you're entitled to interest on the 5001 in the absence of a

1 judgment, right?

2 MR. GOETT: I'm sorry, Your Honor?

3 THE COURT: Are you entitled to interest under the
4 CPLR under Article 50 if you never recover a judgment?

5 MR. GOETT: Your Honor, we don't --

6 THE COURT: I know there's case law on that
7 recently.

8 MR. GOETT: Your Honor, we believe the HBE Leasing
9 case has been actually overturned on -- by Judge -- I
10 apologize, Your Honor, we'll be brief -- to the Eastern
11 District -- the HBE Leasing case and talk about inchoate
12 rights, Your Honor, in 5001.

13 To my recollection, Your Honor, that case has been
14 appropriately distinguished, it was on that facts involving
15 a prenuptial agreement that was clearly fictitious, Your
16 Honor.

17 THE COURT: All right. Well that's a legal
18 argument.

19 All right. So is there anything to be tried? You
20 put in -- let me ask the trustee of course on whether the
21 trustee wants to present on any evidence.

22 MR. ROLLINSON: We do, Your Honor, in terms of the
23 stipulations that the parties have reached.

24 So as an initial matter, although this might not
25 be necessary, but there's stipulations set for the in

1 Section 3 of the second revised joint pretrial order, we'd
2 ask that those be considered part of the record for purposes
3 of this trial.

4 THE COURT: Well of course they're part of the
5 record, it's the joint pretrial record.

6 MR. ROLLINSON: Okay.

7 THE COURT: That's the whole purpose of it to
8 expedite the trial.

9 MR. ROLLINSON: Okay. I appreciate it. I
10 apologize, Your Honor.

11 Furthermore we seek to introduce the stipulated --
12 trustee's stipulated trial exhibits at this time.

13 THE COURT: Any objection, Mr. Goett?

14 MR. GOETT: No.

15 THE COURT: They're received.

16 (Trustee's Trial Exhibits were admitted)

17 MR. ROLLINSON: Okay. So should I make a record
18 of that or simply just those exhibits that are identified in
19 the joint pretrial order --

20 THE COURT: Does that include the declarations?

21 MR. ROLLINSON: It does, Your Honor.

22 THE COURT: Is there any objection to the receipt
23 of the declarations as direct testimony?

24 MR. GOETT: No, Your Honor.

25 THE COURT: Do you wish to cross-examine any of

1 the declarants?

2 MR. GOETT: No we do not, Your Honor.

3 THE COURT: Okay. I'll receive the declarations
4 as their testimony.

5 (Trustee's Declarations were admitted)

6 MR. ROLLINSON: Okay. Your Honor, as far as the
7 exhibits are you going to consider the exhibits that we
8 provided to Your Honor to be the exhibits that are now moved
9 into --

10 THE COURT: They're received in evidence, they're
11 part of the trial.

12 MR. ROLLINSON: Okay.

13 Your Honor, just one bit of housekeeping on that.
14 The declarations didn't bear the particular exhibit stamp
15 that the Court generally prefers on exhibits, so I do have
16 substitute forms so that in the event that you have to
17 review those they are properly (indiscernible). May I
18 approach?

19 THE COURT: Yes.

20 MR. ROLLINSON: Your Honor, there's one a little
21 bit of housekeeping. I'm not sure if I need to cover it or
22 not, but we have three experts, we have declarations from
23 experts. The parties have stipulated to their
24 qualifications as experts. And normally if you're before a
25 jury that is the function and sole function of the Court as

1 the gatekeeper to make that determination, and out of an
2 abundance of caution we ask that the Court deem each of
3 these experts qualified in their particular field of
4 expertise.

5 THE COURT: Seems it's stipulated to, but is there
6 any objection to that?

7 MR. GOETT: No, Your Honor, no, obviously not.

8 THE COURT: All right. I've reviewed the
9 declarations, I'm satisfied that they're -- they had the
10 expertise to give the testimony they've given.

11 MR. ROLLINSON: I appreciate it. Thank you, Your
12 Honor.

13 I have nothing further to present to Your Honor.

14 THE COURT: Okay.

15 MR. GOETT: Your Honor, in terms of the -- just as
16 a housekeeping matter Your Honor indicated that's a legal
17 he's going reserve that I believe for post-trial briefing.
18 I just wanted to take the opportunity to perhaps discuss
19 those legal issues we intend to bring, Your Honor.

20 THE COURT: Why don't you make the record. For
21 example, you have tax return -- well testimony from
22 Mr. Spence I think it is.

23 MR. GOETT: Yes, Mr. Speece (ph), Your Honor.

24 THE COURT: Regarding -- Speece -- regarding the
25 amount of taxes that the defendant paid on account of the

1 (indiscernible) profits.

2 MR. GOETT: Yes, Your Honor.

3 THE COURT: Is there any objection to the receipt
4 of that declaration? I recognize you say it's irrelevant.

5 MR. ROLLINSON: Correct. Subject to that
6 objection we -- that's our only objection.

7 THE COURT: I think it probably is irrelevant, but
8 so you can make your record --

9 MR. GOETT: Yes, Your Honor, proffer.

10 THE COURT: -- I'll receive the declaration and
11 the accompanying exhibits to the declaration for that
12 purpose.

13 (Defendant's Exhibit No. 7 was admitted)

14 MR. GOETT: Your Honor, along those that would be
15 Defendant's 7 would be Mr. Speece's affidavit in and
16 supporting exhibits, as well as Defendant's 1 through 5,
17 Your Honor, at this time, which would be the tax returns
18 from 2003 to 2007.

19 MR. ROLLINSON: And, Your Honor, we have no
20 objection other than to relevancy.

21 THE COURT: Subject to the objection of relevance,
22 although I probably agree, so we'll have a record of that --

23 MR. GOETT: Yes, Your Honor.

24 THE COURT: -- I'll receive them for that purpose
25 in essence as an offer of proof.

1 (Defendant's Exhibit Nos. 1 through 5 were admitted)

2 MR. GOETT: Your Honor in that same vein we offer
3 up Defendant's 6 -- I'm sorry, Your Honor -- Defendant 7
4 which is a list of the legal fees incurred and paid by
5 Mr. Cohen in connection with this matter. Same subject to
6 the trustee --

7 THE COURT: I don't understand how you can recover
8 legal fees. Normally each party must bear its own legal
9 fees, and that's --

10 MR. GOETT: Your Honor --

11 THE COURT: -- true of every court case.

12 MR. GOETT: No, Your Honor, this is a case
13 involving a -- the wrongful act doctrine, I believe it's
14 been called to Your Honor where I am sued by a party as a
15 result of the fraud committed by the individual and I incur
16 legal fees as a result that we are entitled to those as
17 consequential damages as a result of the fraud.

18 THE COURT: Well, I guess that's a legal issue.

19 MR. GOETT: Yes, Your Honor.

20 THE COURT: All right.

21 MR. GOETT: Just for housekeeping, Your Honor.

22 THE COURT: So where's the evidence?

23 MR. GOETT: That would be, Your Honor,
24 Defendant 7.

25 MR. ROLLINSON: Your Honor, the trustee has no

1 objection to that particular exhibit but for again an
2 objection on the basis of relevancy.

3 THE COURT: Well these are the tax returns.
4 Exhibit 7?

5 MR. GOETT: Sorry, Your Honor, 1 through 5 are the
6 tax returns, Your Honor.

7 THE COURT: Where's the legal -- where is the
8 evidence of legal fees?

9 MR. GOETT: Sorry, Your Honor?

10 THE COURT: Where's is evidence of legal fees?

11 MR. GOETT: That would be, Your Honor,
12 Defendant's 6.

13 THE COURT: Okay. I see it.

14 MR. GOETT: Okay, Your Honor.

15 THE COURT: All right. Subject to the same
16 objection, relevancy, I'll receive it so the record is
17 complete.

18 (Defendant's Exhibit No. 6 was admitted)

19 MR. GOETT: Your Honor, similarly we would offer
20 Defendant's 8 and 9 at this time. Eight being a -- take
21 judicial notice of the consumer price index as issued by the
22 Bureau of Labor, statistics by the Department of Labor.

23 THE COURT: Any objection?

24 MR. ROLLINSON: The same objection, Your Honor, we
25 -- the only basis on which we object is relevancy.

1 THE COURT: All right. Subject to that objection
2 I'll receive it so the record is complete.

3 (Defendant's Exhibit No. 8 was admitted)

4 MR. GOETT: And finally, Your Honor, the
5 Defendant's 9 which is the history of the three-month risk-
6 free treasury bill rate issued by the Federal Reserve, Your
7 Honor, offered as 9 as well.

8 MR. ROLLINSON: Your Honor, same objection.

9 THE COURT: All right. Subject to that objection
10 I'll receive it.

11 (Defendant's Exhibit No. 9 was admitted)

12 MR. GOETT: Your Honor, we would just take an
13 opportunity to make for the record as to why this evidence
14 is relevant at this point.

15 THE COURT: Let me just ask a question though.
16 Mr. Cohen was part of the proceedings involving the
17 withdrawal of a reference that resulted in what we've been
18 calling the antecedent debt decision, is that 499(b)(a)?

19 MR. GOETT: Yes, Your Honor.

20 THE COURT: So aren't all of these antecedent debt
21 issues in his case the law of the case?

22 MR. GOETT: Your Honor, we believe that there are
23 subsequent decisions by the Second Circuit and the 546(e)
24 decision and other -- that would question the findings of
25 Judge Rakoff's decision in the original antecedent debt

1 order.

2 THE COURT: But based on letters that Mr. Levy
3 wrote to me after those decisions, which I --

4 MR. GOETT: I have not seen --

5 THE COURT: -- commented on in the omnibus
6 decisions?

7 MR. GOETT: To be honest, Your Honor, I've not
8 seen -- I don't know the full scope of Mr. Levy's letters at
9 this time.

10 THE COURT: I'm sorry.

11 All right. You can always make an argument based
12 on intervening law I guess. So that -- do the parties rest?

13 MR. GOETT: One more bit of housekeeping, Your
14 Honor, I apologize.

15 With respect to -- we have submitted our --

16 THE COURT: Quickest trial I've ever seen.

17 MR. GOETT: Sorry, Your Honor.

18 We have stipulated the right to align the
19 plaintiff's exhibits as well. I wanted to make for the
20 record the point that I believe it's Plaintiff's 1 and all
21 the account history statements, the account statements
22 provided, we intend to rely on those to show that Madoff
23 owed Mr. Cohen obligations under state and federal laws that
24 have not been avoided and constitute 548(c) antecedent debt,
25 Your Honor.

1 THE COURT: Okay.

2 MR. GOETT: Other than that, Your Honor, we just
3 have a question as to what the schedule would be for the
4 post-trial briefings at this time.

5 THE COURT: Well, I will be making a report and
6 recommendation in this case since the defendants have not
7 consented to the entry of a final judgment here. But let me
8 hear what Mr. Rollinson -- is there something you want to
9 comment on on the record?

10 MR. ROLLINSON: Yeah, just briefly, Your Honor,
11 and you did touch upon it in terms of Judge Rakoff's
12 antecedent debt decision. And as you pointed out in your
13 decision on the omnibus motion to dismiss that was -- we
14 returned to this court for further proceedings consistent
15 with this opinion and order.

16 So, I don't think this is the appropriate forum in
17 which to question Judge Rakoff's decision there even if
18 there is intervening law.

19 THE COURT: Well you said it was a bankruptcy
20 judge.

21 MR. ROLLINSON: Well the district court had
22 removed and withdrawn the reference on that specific issue
23 and so therefore it believes it's its province to make those
24 determinations.

25 THE COURT: But let's say the Second Circuit came

1 out with a contrary decision which undercut it -- clearly
2 undercut it, I couldn't consider that?

3 MR. ROLLINSON: Perhaps in that instance you
4 could, Your Honor, but --

5 THE COURT: All right.

6 MR. ROLLINSON: The only other point I just want
7 to make, Your Honor, in terms of some of the additional
8 contentions that Mr. Cohen makes, he makes seven different
9 separate contentions. I believe most of those -- I think
10 all of those were actually addressed by Your Honor in the
11 omnibus --

12 THE COURT: I know but he wasn't a party to those
13 proceedings.

14 MR. ROLLINSON: That's correct. That's correct.

15 The only point I did want to make as I relates to
16 that, it's contention number 4 just for purposes of the
17 record while we're here, and that's a challenge to standing
18 -- the trustee's standing under Section 78fff(2)(c)(3).

19 As you know it's the trustee's position that the
20 appropriate time to measure the sufficiency or insufficiency
21 of customer property to satisfy customer claims in full is
22 the filing date of bankruptcy, and certainly if you look and
23 what's before the Court now in the record both in terms of
24 Mr. Debinsky's analysis as well as -- that numerous -- both
25 motions, hearings, and decisions made by Your Honor and your

1 predecessor in the underlying proceedings even as we stand
2 here today they're insufficient customer funds to satisfy
3 all customer claims.

4 We don't think you need to look forward in time,
5 we think it's the filing date, I think that's the -- we
6 think it's the appropriate time at which to inquire into
7 that issue, but we just want to make clear that the record
8 establishes irrespective when we look at it they're
9 insufficient --

10 THE COURT: Is there evidence of that
11 insufficiency?

12 MR. ROLLINSON: There is evidence both in terms of
13 Mr. Debinsky's report, he does an insolvency analysis as of
14 the date of filing so it's in there in terms of that initial
15 date, and then of course, Your Honor, everything that's
16 happened, which we can't ignore in the underlying --

17 THE COURT: I'm not sure I can take judicial
18 notice at a trial of everything that's happened, that's why
19 I asked is there evidence of the insufficiency, because
20 you're the party with the burden of showing you have
21 standing.

22 MR. ROLLINSON: That's correct, Your Honor. I
23 believe you can take it in the underlying -- this adversary
24 proceeding as part of the underlying liquidation proceedings
25 and so you can look to that docket and the events in that.

1 THE COURT: Thank you.

2 MR. ROLLINSON: Thank you.

3 THE COURT: Anything else?

4 MR. GOETT: No, Your Honor.

5 THE COURT: Why don't you submit proposed findings
6 of fact and conclusions of law two weeks from today.

7 Mr. Rollinson, I'll give you two weeks to respond, that
8 would be --

9 MR. GOETT: Your Honor, if I may, respectfully we
10 would ask the Court if we have a little more time for that
11 based on our --

12 THE COURT: Why?

13 MR. GOETT: Your Honor, we're a small --

14 THE COURT: All of these issues have been
15 litigated.

16 MR. GOETT: I know, Your Honor, but we would
17 appreciate the time, we are a small firm, I don't have six
18 lawyers on my side, Your Honor, to --

19 THE COURT: How much time do you need?

20 MR. GOETT: Your Honor, we would ask for four
21 weeks if that's at all possible.

22 THE COURT: Is there any objection to that?

23 MR. ROLLINSON: None, Your Honor. And just to
24 clarify, does that include briefing as well or just proposed
25 findings of facts.

1 THE COURT: That's everything.

2 MR. ROLLINSON: Everything?

3 THE COURT: So it's proposed findings of fact and
4 proposed conclusions of law.

5 MR. ROLLINSON: Okay.

6 THE COURT: You can do the proposed conclusions in
7 a memorandum form, it doesn't have to be in the -- honestly
8 I don't know why it's going take you so long. All of the
9 proposed findings of facts are going to come right out of
10 the stipulated facts.

11 MR. GOETT: Your Honor, I think the issue is we
12 make sure we all (indiscernible) our arguments to the extent
13 --

14 THE COURT: Okay. All right. Four weeks from
15 today, and I'll give you -- you want four weeks also I
16 suppose? Sure, why not, right?

17 MR. ROLLINSON: Yes.

18 THE COURT: What's four weeks from today?
19 Actually you go first.

20 MR. ROLLINSON: So I'm glad you've decided four
21 weeks is appropriate.

22 (Laughter)

23 THE COURT: Well he jumped up.

24 Four weeks from today is November 11th, which is a
25 holiday, so November 12. And four weeks after that is

1 December 9. And I'm going to give you an opportunity to
2 reply to his legal arguments (indiscernible), and let's just
3 make it December 31.

4 MR. ROLLINSON: That's acceptable, Your Honor.

5 THE COURT: All right? Thank you.

6 MR. ROLLINSON: Thank you, Your Honor.

7 THE COURT: And the matter will be deemed
8 submitted at that point.

9 MR. GOETT: Yes, Your Honor. Thank you.

10 (Whereupon these proceedings were concluded at 10:38
11 AM)

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I N D E X

E X H I B I T S

	PARTY	NO	DESCRIPTION	EVID.
1				
2				
3				
4	Plaintiff		Stipulated Trial Exhibits	15
5			Declarations	16
6				
7				
8	Defendant	1-5	Tax Returns	19
9		6	Legal Fees	20
10		7	Mr. Speece's Declaration	18
11		8	CPI	21
12		9	3-Month Risk-Free Treasury	
13			Bill Rate	21
14				
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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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Dawn South

AAERT Certified Electronic Transcriber CET**D-408

Date: October 15, 2015

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